

CITY COUNCIL PROCEEDINGS

March 22, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on March 16, 2023, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council President Bruce Meysenburg, Council members Kevin Woita, Pat Meysenburg, Jim Angell, Keith Marvin, Tom Kobus, City Attorney David Levy, and Interim City Administrator/City Clerk Tami Comte.

Also present for the meeting were: Deputy Clerk Lori Matchett, Police Chief Marla Schnell, Electric Supervisor Pat Hoeft, Matt Kalin with JEO Engineering, Louise Niemann with Butler County Extension and Maria Cantu Hines, Dan & Jan Sypal, David McPhillips and Jerry Kosch.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to please silence their cell phones. Mayor Miller read the speaking guidelines for the City Council meeting. She also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Bruce Meysenburg made a motion to approve the minutes of the March 8, 2023 meeting of the Mayor and City Council as presented. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Abstain (Without Conflict), Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

Mayor Jessica Miller stated that the next item on the agenda was Resolution No. 12-2023 Establishing Rules and Procedures for the Conduct of Public Meetings and the Participation at such meetings.

Jerry Kosch spoke in opposition to Resolution No. 12-2023.

Council member Bruce Meysenburg made a motion to pass and adopt Resolution No. 12-2023 Establishing Rules and Procedures for the Conduct of Public Meetings and the participation at such meetings. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea Yea: 6, Nay: 0

RESOLUTION NO. 12-2023

A RESOLUTION OF THE CITY OF DAVID CITY, NEBRASKA, ESTABLISHING RULES AND PROCEDURES FOR THE CONDUCT OF PUBLIC MEETINGS AND PUBLIC PARTICIPATION AT SUCH MEETINGS.

WHEREAS, the City of David City, Nebraska ("City") is a municipal corporation of the State of Nebraska and an independent body of government with all powers and duties that Nebraska law has conveyed, and

WHEREAS, these rules and procedures for City Council meetings establish a standard policy and identify rules and procedures for the conduct of meetings of the City Council, the Planning Commission, the Board of Adjustment, the Community Development Agency and all other official committees the City may have formed or may form in the future. Reference to the City Council herein shall include these other bodies and committees unless this Resolution states otherwise.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of David City, Nebraska, that the following rules and procedures for public meetings be in full force and effect and posted in clear view of the general public at all such meetings:

A. Purpose

These Rules of Procedures for City Council meetings establish a standard policy and identify rules and procedures for the conduct of City Council meetings.

The City of David City is subject to Nebraska Revised Statutes sections 84-1407 to 84-1414, known as the Open Meetings Act.¹ The City will conduct public meetings in a timely and orderly manner and in compliance with applicable law.

B. Definitions

1. Agenda shall mean a formal listing of items to be considered by the City Council at a noticed public meeting of the City Council.
2. Council Packet shall mean a compilation of documents supporting the items listed on the Agenda and requiring Council action, which the City and the public may use for more in-depth information that may be presented in an oral report.
3. Meeting shall mean the gathering of a quorum of members of the City Council, as a result of a Public Notice and Agenda, to propose to take legal action or to deliberate legal action to be taken in the future.
4. Newspaper shall mean the publication containing an Agenda of subjects known at the time of publicized notice, or a statement that the Agenda shall be available for public inspection at the principle office of the City Council.

¹ Statutory references are to the Nebraska Revised Statutes unless otherwise stated.

5. Notice shall mean a formal announcement to the public that sets forth the date, time, and place for which a meeting of the City Council will be held.
6. Ordinance shall mean a Council action setting forth a rule of public conduct that is considered long-term. Long-term rules include zoning issues, annexations or any abandonment, laws of the City, and such.
7. Presiding Officer shall mean the Mayor, City Council President, or other designee, who shall preside over the Meeting of the City Council and conduct the meeting in conformance with and adherence to all applicable state statutes, policies, rules, regulations, and procedures.
8. Quorum shall mean the minimum number of members of the City Council who must be present in order for business to be legally transacted. With a six-member body, a quorum is four members. If there is a vacancy on the City Council resulting in a five-member body, a quorum is still four members, provided, however, that the affirmative vote of three members in that case is sufficient to act.
9. Resolution shall mean a more formal motion normally utilized to set forth policy of the City. Resolutions are used for various reasons, such as when specifically required by law, when needed as a separate evidentiary document to be transmitted to another governmental agency, or where the frequency of future references back to its content warrants a separate document to facilitate such future reference and research.

C. Types of Meetings

1. Regular Meetings
 - a. The City Council of the City of David City, Nebraska shall hold Regular Meetings in the City Council meeting room in the City Office Building. Regular Meetings shall be held on the second (2nd) and fourth (4th) Wednesday of each month at the hour of seven o'clock (7:00) P.M., unless otherwise declared.
 - b. Regular Meetings, open to the public, are for the purpose of discussion or action of the City Council on items on an agenda.
 - c. Pursuant to section 84-1410, the City Council may meet in CLOSED Executive Session.
2. Committee of the Whole Meeting
 - a. The City Council of the City of David City, Nebraska may hold Committee of the Whole Meetings in the City Council meeting room in the City Office Building. The location, date, and time of Committee of the Whole Meetings shall be determined by the City Council at their Regular Meeting within the same month.
 - b. Committee of the Whole Meetings, open to the public, are held for the purpose of presentations, suggestions, and discussions on non-action

items that require more in-depth consideration or conversations of the City Council than may be possible at a Regular Meeting. No formal action of the City Council may be taken at such meetings, other than a general consensus vote of the City Council conveying directions to staff for further action in one of the following ways:

1. Advance to the Regular Council Meeting as an action item that is ready for a ruling vote;
 2. Table for further consideration and discussion to the next scheduled Committee of the Whole Meeting;
 3. Cease conversations indefinitely due to lack of support; or
 4. Designate as a non-action item requiring no further consideration.
3. Special Meetings
- a. The Mayor or by three members of the City Council may call a special meeting, the object of which shall be submitted to the Council in writing. Upon filing the call for a Special Meeting, the City Clerk shall notify the City Council of the Special Meeting, stating the time and its purpose.
 - b. Special Meetings, open to the public, are held for the purpose of discussion or to take action on an unforeseen issue where time is of the essence and sufficient time does not provide for the posting of a meeting notice 24 hours or more before the meeting.
 - c. Pursuant to section 84-1410, the City Council may meet in CLOSED Executive Session.

D. Public Participation in Council Meetings

1. Purpose. The purpose of addressing the City Council is to communicate formally with the Council regarding matters that relate to Council business. Persons addressing the City on an agenda item shall confine their remarks to the matter under consideration by the Council.
2. Commencement of Public Comment Period. Persons other than Council Members may address the Council on topics relevant to agenda items during public comment periods of the meeting or during public hearings. The Presiding Officer will publicly announce the opening and closing of public comment periods or public hearings. All public comment shall comply with the rules set forth in Exhibit A. Speakers shall use the podium and microphone(s) in the meeting room.
3. Obtaining the Floor. Any person wishing to speak shall first obtain the floor by being recognized by the Presiding Officer. When called upon by the Presiding Officer, the speaker's comment and testimony are to be directed to the Presiding Officer. Dialogue between and inquiries from the speaker and individual Council Members, members of staff, or the audience is prohibited. The Presiding Officer may limit discussion when it is not relevant to the agenda item or is off topic.

4. Time Limit. In the interest of fairness to other persons wishing to speak and to other individuals or groups having business before the City Council, each speaker may be instructed to limit comments to a specified time which is permitted by the Presiding Officer. If a large number of people wish to speak, the Presiding Officer may set reasonable rules for speakers, including time limits, so the number of persons wishing to speak may be accommodated within the time available.
5. Speak Only Once. Second opportunities for the public to speak on the same issue will not be permitted unless a Council Member seeking to clarify testimony or to gain additional information should make such a request through the Presiding Officer. The Presiding Officer may allow additional opportunities for the public to speak for the purpose of clarifying testimony when determined to be necessary and such additional comments are not repetitious or previous testimony. The Presiding Officer may limit secondary discussion when it is repetitious, not relevant to the agenda item or off topic.
6. Audience / Speaker Decorum. Members of the audience and speakers shall not engage in disorderly or boisterous conduct, including the utterance of loud, threatening, or abusive language; clapping; whistling; stamping; or other acts that disturb, disrupt, impede, or otherwise render the orderly conduct of the City Council meeting unfeasible.

A member of the audience or a speaker engaging in such conduct will be warned by the Presiding Officer that they are “out of order”. If the member of the audience or a speaker continues with the disruption they may be removed from the meeting by order of the Presiding Officer.

7. Conclusion of Public Comment Period. After a motion has been made, or after a public hearing has been closed, no member of the public shall address the Council, unless a Council Member seeking to clarify testimony or gain additional information should make such a request through the Presiding Officer.

E. Public Agenda Item Submittals

1. Except for Executive Session matters, items may be placed on future City Council meeting Agendas for discussion and possible action by:
 - a. Completion of the **Request for Future Agenda Item** form located in the City Council Chambers, City’s website, and the front desk at City Hall;
 - b. Return completed **Request for Future Agenda Item** form to the City Administrator;
 - c. City Administrator reviews the completed **Request for Future Agenda Item** form;
 - d. City Administrator may forward the completed **Request for Future Agenda Item** form to City staff for review and appropriate action or place on the next appropriate City Council Agenda; and

- e. A copy of the **Request for Future Agenda Item** form will be returned to the source with documentation of resolution or City Council meeting Agenda date and time.

PASSED AND APPROVED this 22nd day of March, 2023.

Mayor Jessica Miller

City Clerk Tami Comte

EXHIBIT A

Rules for Speaking at Public Meetings of the City of David City

Welcome to the David City City Council meeting. You may speak on an agenda item one time, at the time appointed. We prefer a more informal setting where the public can comment appropriately on any item, but if needed, I will restrict the time and the number of comments. You may also send written remarks to the council at any time and it will be distributed to the mayor and council members. You are welcome to call the city office or talk to the mayor or a council member before or after meetings.

If you wish to speak, please stand up and wait for me to call on you. When it is your turn, please come to the podium, give your name, address and the name of any organization you represent, if any. Please address the Council as a whole, and not an individual council member or staff member. We expect all speakers will act in a courteous and efficient manner and will not use inflammatory language, comment on personalities, or indulge in derogatory remarks or insinuations regarding any member of the Council, or any member of the staff or the public. Please confine your remarks to information relevant to the agenda item under discussion. If these rules are not followed you may lose your right to speak or be asked to leave.

Once a member of the Council makes a motion and another Councilmember seconds that motion, the opportunity for public comment shall end. Allowing public comment on an item does not make that item a public hearing item as to notice or any other requirements. Thank you for your help in maintaining an orderly, productive, and respectful meeting.

Mayor Jessica Miller stated that the next item on the agenda was a request from Butler County Extension for \$1,000 to help support two Fellowes to assist with the Rural Prosperity Nebraska Program.

Louise Niemann introduced herself and also introduced Maria Hains and they explained the Rural Prosperity Nebraska Program.

Council member Keith Marvin made a motion to approve the request from Butler County Extension for \$1,000 to help support two Fellowes to assist with the Rural Prosperity Nebraska program and approve using ARPA funds for the program. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Mayor Jessica Miller opened the public hearing at 7:13 p.m. to consider the purchase of the RV campground located in the W ½ of the SW ½ 1.5 acres and part of Outlot 2 and part of

Outlot 3, part of the W ½ of the SW ½ 2.625 acres, West Addition by the City of David City. The initial intent of purchasing the RV campground would be to add the parcel to the current David City Park System.

David McPhillips introduced himself and asked some questions regarding the purchase of the RV Campground. McPhillips asked how much the City was paying for the campground and was provided the following information.

Campground purchase

Purchase of ground from Nine Stories	\$82,500.00
NDEE – Review Fee	\$794.24
JEO Engineering Design	\$36,027.50
M.E. Collins – Estimate #1	<u>\$202,173.00</u>
Total	\$321,494.74

Council member Tom Kobus made a motion to pass and adopt Resolution No. 13-2023 purchasing the RV campground from the CDA. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

RESOLUTION NO. 13-2023

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, AUTHORIZING THE PURCHASE OF CERTAIN REAL PROPERTY, AND THE RECEIPT OF THE ASSIGNMENT OF ALL CONTRACTS RELATED THERETO.

WHEREAS, the Community Development Agency of the City of David City, Nebraska (the "Agency"), is the fee title owner of that certain real property located in David City, Butler County, Nebraska, as described on Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Agency acquired the Property for the purpose of developing and operating a recreational vehicle park and campground for use by the public; and

WHEREAS, the Agency has partially completed the foregoing development; and

WHEREAS, the Agency and the City of David City, Nebraska (the "City") believe it is in the long-term best interest of the City and the Agency, and the general public, for the Agency to convey the Property to the City, along with all contracts related thereto, in accordance with this Resolution; and

WHEREAS, following such conveyance, the City will complete the development and operate the same for the purposes outlined above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY:

Section 1. The foregoing recitals are true and correct, and are hereby incorporated as if set forth, in full, below.

Section 2. The Mayor and City Council of the City of David City, Nebraska, authorize City staff to take all necessary steps and the Mayor or her designee to execute all necessary documents to effectuate the acquisition of the Property by the City, in consideration of the Property's fair market value, which the City and the Agency shall subsequently determine. Such determination shall not require further action or approval by the City.

Section 3. Contemporaneously with the sale of the Property to the City, the Agency shall assign all contracts and other materials incident to ownership of the Property and/or development of the improvements thereon to the City and the City shall take all necessary steps and the Mayor shall execute all necessary documents to accept such assignment(s).

Section 4. The Mayor or her designee are hereby authorized to execute any such documents, instruments, agreements or certifications relating to such matters contained in this Resolution, and the execution and delivery of the same by the Mayor or her designee shall conclusively establish their authority with respect thereto and the authorization and approval thereof.

INTRODUCED BY COUNCIL MEMBER Tom Kobus

PASSED AND ADOPTED THIS 8th DAY OF FEBRUARY, 2023.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A
The Property

(See Attached)

File No.: 10933

EXHIBIT A

The Land referred to in this policy is described as follows:

All that part of the W1/2 SW1/4 of Section 19, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, known as Outlot 3, in the City Clerk's West Addition to David City, Nebraska, described as follows: Beginning at a point on the West line of Oak Street in Miles 4th Addition to David City, Nebraska, 320 feet South of the South line of Right-of-Way of Fremont, Elkhorn, and Missouri Valley Railroad Company across said W1/2 SW1/4 of Section 19, thence running West in a direct line 637 feet more or less to the West Section line of said Section 19, thence running South on said Section line 187 feet more or less, thence running East 637 feet to the West line of Oak Street, thence running North on said West line of Oak Street 187 feet more or less, to the place of beginning, Less that portion of Real Estate Deeded in Book 82, Page 238 described as follows: Beginning at the Northeast corner of Lot 5, Block 1, Hall's Addition to David City, Nebraska; running thence North at right angles to said Block 1, a distance of 20 feet; running thence West in a line parallel to the North line of said Block 1, a distance of 75 feet, running thence South, a distance of 20 feet to the Northwest corner of the E1/2 of Lot 6, in said Block 1, Hall's Addition to David City, Nebraska, running thence East along the North line of said Block 1, a distance of 75 feet to the point of beginning.

AND

That part of the W1/2 SW1/4 of Section 19, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, described as follows: Beginning at a point on the West line of Oak Street in Miles 4th Addition to David City, Nebraska, 320 feet South of the South line of right-of-way of the F. E. and M.V.R.R., thence running North 320 feet to said South line of the right-of-way; thence running West along said South line of right-of-way 659 1/2 feet to the Section line; thence running South along said Section line 323 3/4 feet; thence running East on direct line to the point of beginning. A strip of land 100 feet wide located South of and adjoining the right-of-way of the Union Pacific Railroad Company and extending across that part of the NW1/4 SW1/4 of Section 19, Township 15 North, Range 3 East, which lies West of the Westerly line of Lot 2, in Block 1, of Miles 4th Addition to David City, Nebraska, said strip of land being 50 feet in width on each side of the center line of the railroad (now removed) of the party of the first part, as said railroad center line was originally surveyed and established over and across the above described premises; EXCEPT the following described real estate, to-wit: A tract of land located in the W1/2 SW1/4 of Section 19, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, described as follows: Beginning at a point on the West line of Oak Street in Miles 4th Addition to David City, Nebraska, said point being 393.92 feet South of the South line of the Union Pacific Railroad; thence Southerly, 26.08 feet, on the West line of said Oak Street; thence Westerly 649 feet, more or less, to a point on the West line of said Section 19, said point being 423.75 feet South of the South line of said Union Pacific Railroad; thence Northerly 32 feet on the West line of said Section 19; thence Easterly, 649.86 feet to the Point of Beginning.

EXCEPT

A tract of land located in West Addition to David City, and in the SW1/4 of Section 19, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the Southeast corner of Outlot 3 in said West Addition to David City, said point also being the Northeast corner of Hall's Addition to David City; thence N0°00'00" E on an assumed bearing on the east line of said Outlot 3, 187 feet, to the Point of Beginning; thence N89°30'30" W, parallel with the North line of said Hall's Addition, 564.37 feet; thence N48°52'50" E, 95.79 feet; thence N86°42'30" E, 205.70 feet; thence N40°57'50" E, 128.00 feet; thence S46°04'59" E, 149.02 feet; thence S0°33'15" W, 14.83 feet; thence S89°59'30" E, 96.15 feet; thence S0°00'00" W, 58.07 feet, to the Point of Beginning.

AND EXCEPT

A tract of land located in West Addition to David City, and in the SW1/4 of Section 19, Township 15 North, Range 3 East of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the Southeast corner of Outlot 3 in said West Addition to David City, said point also being the Northeast corner of Hall's Addition to David City; thence N0°00'00" E on an assumed bearing on the east line of said Outlot 3, 140 feet to the Point of Beginning, said Point being the Northeast corner of a parcel of land conveyed by Deed recorded in Microfilm Book 16 Page 485; thence N89°31'10" W, 170 feet, to the northwest corner of said conveyed parcel; thence S0°00'00" W, 140 feet, to the southwest corner of said conveyed parcel; thence N89°31'10" W, on the North line of said Hall's Addition, 30.16 feet; thence N0°31'45" E, 19.85 feet; thence N89°38'10" W, 75.00 feet; thence S0°12'00" W, 20.00 feet, to a point on the North line of said Hall's Addition; thence N89°29'55" W, on the North line of said Hall's Addition, 368.77 feet, to a point on the West line of said Section 19; thence N1°45'20" W, on the West line of said Section 19, 142.70 feet; thence S89°29'55" E, 33.03 feet; thence N48°52'50" E, 67.31 feet; thence S89°30'30" E, parallel with the North line of said Hall's Addition, 564.37 feet, to a point on the East line of said West Addition; thence S0°00'00" W, 47 feet, to the Point of Beginning.

AND EXCEPT

A tract of land out of and a part of Outlot 3, West Addition to David City, located in the West Half of the Southwest Quarter of Section 19, Township 15 North, Range 3 East of the 6th P.M., more particularly described as follows: Beginning at the Southeast corner of said Outlot 3; thence N89°47'45" W, along and with the South line of said Outlot, a distance of 200.00 feet; thence N00°00'00" E, a distance of 170.00 feet; thence S89°47'45" E, parallel with the South line of said Outlot, a distance of 200.00 feet, to a point on the East line of said Outlot 3; thence S00°00'00" W, along and with the East line of said Outlot 3, a distance of 170.00 feet, to the point of beginning.

AND EXCEPT

A tract of land out of and a part of Outlot 2, West Addition to David City located in the West Half of the Southwest Quarter of Section 19, Township 15 North, Range 3 East of the 6th P.M., David City, Butler County, Nebraska, more particularly described as follows: Commencing at the Northeast corner of said Outlot 2; thence S00°00'00" E, along and with the East line of said Outlot 2, a distance of 119.64 feet to the point of beginning; thence continuing S00°00'00" E, continuing along and with the East line of said Outlot 2, a distance of 176.19 feet; thence N43°38'08" W, a distance of 202.37 feet; thence N59°33'44" E, a distance of 58.68 feet; thence S90°00'00" E, a distance of 89.05 to the point of beginning.

AND EXCEPT

A tract of land out of and a part of Outlot 2, West Addition to David City located in the West Half of the Southwest Quarter of Section 19, Township 15 North, Range 3 East of the 6th P.M., David City, Butler County, Nebraska, more particularly described as follows: Commencing at the Northeast corner of said Outlot 2; thence S00°00'00" E, along and with the East line of said Outlot 2, a distance of 295.83 feet, to the point of beginning; thence continuing S00°00'00" E, continuing along and with the East line of said Outlot 2, a distance of 20.00 feet; thence N90°00'00" W, a distance of 30.98 feet; thence N43°38'08" W, a distance of 195.52 feet; thence N40°48'34" E, a distance of 25.56 feet, thence N59°33'44" E, a distance 11.08 feet; thence S43°38'08" W, a distance of 202.37 feet to the point of beginning.

AND EXCEPT

A tract of land out of and a part of Outlot 2, West Addition to David City located in the West Half of the Southwest Quarter of Section 19, Township 15 North, Range 3 East of the 6th P.M., David City, Butler County, Nebraska, more particularly described as follows: Commencing at the Northeast Corner of said Outlot 2; thence S00°00'00" E, along and with the East line of said Outlot 2, a distance of 315.83 to the point of beginning; thence continuing S00°00'00" E, continuing along and with the East line of said Outlot 2, a distance of 20.00 feet; thence N90°00'00" W, a distance of 96.01 feet; thence N46°04'59" W, a distance of 149.02 feet; thence N40°48'34" E, a distance of 57.23 feet; thence S43°38'08" W, a distance of 195.52 feet; thence S90°00'00" E, a distance of 30.98 feet to the point of beginning.

Council member Pat Meysenburg made a motion to pass and adopt Resolution No. 14-2023 approving a loan contract with the Nebraska Department of Environment and Energy. Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

RESOLUTION 14-2023

WHEREAS, the City of David City, Nebraska recognizes that a properly functioning Public Water System is necessary to the health and welfare of the citizens of the City; and

WHEREAS, the Mayor and City Council have determined that portions of the City Public Water System are in need of significant repair and improvement; and

WHEREAS, funding for the cost of the repair and improvement of portions of the City Public Water System may be obtained by loan from the Nebraska Department of Environment and Energy, subject to certain requirements and obligations;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of David City, Nebraska that they should execute the contract for loan between the Nebraska Department of Environment and Energy and the City of David City, Nebraska designated as Project No. D311686, incorporated by reference into this Resolution as if fully set forth; and

BE IT FURTHER RESOLVED, Jessica Miller, Mayor, is hereby directed to execute the Agreement and all other documents necessary to facilitate the Loan between the Nebraska Department of Environment and Energy and the City of David City, Nebraska for the purpose of repairing and improving the City's Public Water System; and

BE IT FURTHER RESOLVED THAT Tami Comte, Clerk, be authorized and directed to sign all necessary documents, to furnish such assurances to the State of Nebraska as may be required by law or regulations, and to receive payment on behalf of the applicant.

HEREBY the RESOLUTION has passed and approved as of March 22, 2023.

City of David City, Nebraska

(signature)

Title Mayor

Date March 22, 2023

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of March 22, 2023.

(signature)

Title Clerk

Council member Keith Marvin requested that the public hearings for the Future Land Use Map and the Official Zoning Map be opened simultaneously because they are regarding the same property.

Mayor Jessica Miller declared the public hearings open at 7:28 p.m. to consider amending the Future Land Use map by changing the zoning classification from Agricultural Crop to Industrial Heavy and to consider amending the Future Land Use map by changing the zoning classification from Agricultural Crop to Industrial Heavy for the following real estate as requested by Arps Red-E-Mix, to wit:

PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 2 EAST OF THE SIXTH P.M., AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE SIXTH P.M., ALL IN BUTLER COUNTY NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S89°56'25"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1396.92 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY; THENCE N30°24'47"W ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 765.41 FEET; THENCE N89°56'25"E, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1790.10 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE CONTINUING N89°56'25"E, A DISTANCE OF 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD "M"; THENCE S00°29'44"W ON SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 660.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE WEST ON SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 24.66 ACRES, MORE OR LESS.

Council member Keith Marvin stated that the Planning Commission unanimously recommended the changes.

Hearing no further comment, Mayor Jessica Miller declared the public hearings closed at 7:29 p.m.

Council member Keith Marvin introduced Ordinance No. 1434 amending the Future Land Use map by changing the zoning classification from Agricultural Crop to Industrial Heavy for the real estate as described above. Mayor Jessica Miller read Ordinance No. 1434 by title.

Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Jim Angell seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Abstain (Without Conflict)
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

Council member Keith Marvin made a motion to pass and adopt Ordinance No. 1434 on 3rd and Final reading amending the future land use map by changing the zoning classification from Agricultural Crop to Industrial Heavy for the following real estate as requested by Arps Red-E-Mix. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Abstain (Without Conflict)
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

ORDINANCE NO. 1434

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP BY CHANGING THE ZONING CLASSIFICATION FROM AGRICULTURAL CROP TO INDUSTRIAL HEAVY FOR AN AREA DESCRIBED AS: PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 2 EAST OF THE SIXTH P.M., AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE SIXTH P.M., ALL IN BUTLER COUNTY NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S89°56'25"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1396.92 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY; THENCE N30°24'47"W ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 765.41 FEET; THENCE N89°56'25"E, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1790.10 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE CONTINUING N89°56'25"E, A DISTANCE OF 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD "M"; THENCE S00°29'44"W ON SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 660.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE WEST ON SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 24.66 ACRES, MORE OR LESS; REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. That the Future Land Use Map be amended as follows to change the zoning classification from Agricultural Crop to Industrial Heavy for the area described as:

PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 2 EAST OF THE SIXTH P.M., AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE SIXTH P.M., ALL IN BUTLER COUNTY NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S89°56'25"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1396.92 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY; THENCE N30°24'47"W ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 765.41 FEET; THENCE N89°56'25"E, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1790.10 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE CONTINUING N89°56'25"E, A DISTANCE OF 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD "M"; THENCE S00°29'44"W ON SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 660.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE WEST ON SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 24.66 ACRES, MORE OR LESS.



Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 22nd day of March, 2023.

Mayor Jessica Miller

City Clerk Tami L. Comte

Council member Keith Marvin introduced Ordinance No. 1435 amending the Official Zoning Map by changing the Zoning Classification from TA – Transitional Ag to I-2 Heavy Industrial for the real estate as described above. Mayor Jessica Miller read Ordinance No. 1435 by title.

Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Abstain (Without Conflict)
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

Council member Keith Marvin made a motion to pass and adopt Ordinance No. 1435 amending the Official Zoning Map by changing the zoning classification from TA - Transitional Ag to I-2 Heavy Industrial for the following real estate as requested by Arps Red-E-Mix. Council Member Bruce Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Abstain (Without Conflict)
Yea: 5, Nay: 0, Abstain (Without Conflict): 1

ORDINANCE NO. 1435

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING CLASSIFICATION OF REAL ESTATE DESCRIBED BELOW FROM TA – TRANSITIONAL AG TO I-2 HEAVY INDUSTRIAL, FOR THE FOLLOWING REAL ESTATE: PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 2 EAST OF THE SIXTH P.M., AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE SIXTH P.M., ALL IN BUTLER COUNTY NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S89°56'25"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1396.92 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY; THENCE N30°24'47"W ON SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 765.41 FEET; THENCE N89°56'25"E, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1790.10 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE CONTINUING N89°56'25"E, A DISTANCE OF 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD "M"; THENCE S00°29'44"W ON SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 660.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE WEST ON SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 24.66 ACRES, MORE OR LESS; REPEALING ANY ORDINANCES IN CONFLICT HEREWITH; DESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT, AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. That the Official Zoning Map be amended as follows:

To amend the zoning classification of real estate from TA – Transitional Ag to I-2 Heavy Industrial for the following real estate: PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 15 NORTH, RANGE 2 EAST OF THE SIXTH P.M., AND PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE SIXTH P.M., ALL IN BUTLER COUNTY NEBRASKA, BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 12; THENCE S89°56'25"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1396.92 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY; THENCE N30°24'47"W ON SAID

EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 765.41 FEET; THENCE N89°56'25"E, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1790.10 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE CONTINUING N89°56'25"E, A DISTANCE OF 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD "M"; THENCE S00°29'44"W ON SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 660.50 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE WEST ON SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING, CONTAINING 24.66 ACRES, MORE OR LESS.



Section 2. That any ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby appealed.

Section 3. This ordinance shall be published in pamphlet form and shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Passed and adopted this 22nd day of March, 2023.

Mayor Jessica Miller

City Clerk Tami L. Comte

Council member Pat Meysenburg made a motion to approve the easements for JB Schmid, LLC and Dollar Tree Stores, Inc. all in Section 18, Township 15, Range 3, all for Northland Subdivision. Council Member Keith Marvin seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

GRANT OF UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, DOLLAR TREE STORES, INC., a _____ corporation ("Grantor"), whether one or more, is the owner of the real estate described as follows:

18-15-3 DAVID CITY 18 15 3 PT OF LOT 8 D.C. LAND & LOT CO'S SUBURBAN LOTS (IN S1/2SE1/4) 1.18 AC

And;

WHEREAS, the CITY OF DAVID CITY, NEBRASKA ("Grantee"), is a municipal corporation duly organized, existing and operating under the laws of the State of Nebraska that operates and maintains various utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or indirectly.

NOW, THEREFORE, in consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which Grantor and Grantee each acknowledge and accept, Grantor does hereby grant unto Grantee an easement over, across, under and upon the real estate described in Exhibit A for the purpose of constructing, maintaining, operating and using utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or indirectly constructed, maintained, operated, or used by the Grantee or its assigns for such utilities.

Grantee shall have the right of ingress and egress over, upon, under and across said real estate for the purpose of constructing, maintaining, operating, using or removing said works.

As further consideration for this easement over, across, upon and under the aforesaid real estate, the following restrictions are imposed and made appurtenant to the aforesaid described real estate:

None.

This easement shall be binding upon Grantor and Grantee and their heirs, successors, assigns, and personal representatives for an indefinite period of time, but shall lapse and have no force or effect wherein the works or construction are not used for the purpose or purposes originally intended by the parties, unless mutually agreed to by the parties.

Dated this ____ day of March, 2023.

GRANTOR

By: _____
President

By: _____
Secretary

GRANTEE, CITY OF DAVID, NEBRASKA

By: _____
Mayor

Attest: _____
City Clerk

EXHIBIT A

Easement Area

David City Easement (Water Line)

2021-08725

20' WATER LINE EASEMENT DESCRIPTION

A 20 FT WATER LINE EASEMENT LOCATED IN PART OF LOT 8, DAVID CITY LAND AND COMPANY'S SUBURBAN LOTS, CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF VIVIAN LANE AND THE NORTHWEST CORNER OF LOT 10 BLOCK 3, NORTHLAND SUBDIVISION; THENCE ON AN ASSUMED BEARING OF N00°57'00"E, ALONG THE WEST LINE OF SAID NORTHLAND SUBDIVISION AND ALSO BEING THE EAST LINE OF LOT 8, DAVID CITY LAND AND COMPANY'S SUBURBAN LOTS, A DISTANCE OF 39.29 FEET TO THE POINT

OF BEGINNING; THENCE S75°47'55"W A DISTANCE OF 73.97 FEET; THENCE N89°43'48"W A DISTANCE OF 221.97 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF 4TH STREET AND ALSO BEING THE WEST LINE OF SAID LOT 8; THENCE N02°03'45"E, ALONG SAID EAST RIGHT OF WAY LINE AND SAID WEST LINE OF LOT 8, A DISTANCE OF 20.01 FEET; THENCE S89°43'48"E A DISTANCE OF 218.80 FEET; THENCE N75°47'55"E A DISTANCE OF 76.84 FEET TO A POINT ON SAID WEST LINE OF NORTHLAND SUBDIVISION AND ALSO BEING SAID EAST LINE OF LOT 8; THENCE S00°57'00"W, ALONG SAID WEST LINE OF NORTHLAND SUBDIVISION AND SAID EAST LINE OF LOT 8, A DISTANCE OF 20.72 FEET TO THE POINT OF BEGINNING. SAID 20 FT WATER LINE EASEMENT CONTAINS A CALCULATED AREA OF 5915.77 SQUARE FEET OR 0.136 ACRES MORE OR LESS.

GRANT OF UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, JB SCHMID, LLC, a Nebraska limited liability company ("Grantor") owns the real estate described as follows:

18-15-3 DAVID CITY 18 15 3 PT OF LOT 8 D.C. LAND & LOT CO'S SUBURBAN LOTS IN S1/2 SE1/4 4.56 AC ANNEX

And;

WHEREAS, the CITY OF DAVID CITY, NEBRASKA ("Grantee"), is a municipal corporation duly organized, existing and operating under the laws of the State of Nebraska that operates and maintains various utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or indirectly.

NOW, THEREFORE, in consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which Grantor and Grantee each acknowledge and accept, Grantor does hereby grant unto Grantee an easement over, across, under and upon the real estate described in Exhibit A for the purpose of constructing, maintaining, operating and using utilities, including but not necessarily limited to sewer, water, electricity, gas, telephone, and cable television, directly or indirectly constructed, maintained, operated, or used by the Grantee or its assigns for such utilities.

Grantee shall have the right of ingress and egress over, upon, under and across said real estate for the purpose of constructing, maintaining, operating, using or removing said works.

As further consideration for this easement over, across, upon and under the aforesaid real estate, the following restrictions are imposed and made appurtenant to the aforesaid described real estate:

None.

This easement shall be binding upon Grantor and Grantee and their heirs, successors, assigns, and personal representatives for an indefinite period of time, but shall lapse and have

no force or effect wherein the works or construction are not used for the purpose or purposes originally intended by the parties, unless mutually agreed to by the parties.

Dated this ____ day of March, 2023.

GRANTOR

By: _____
President

By: _____
Secretary

GRANTEE, CITY OF DAVID, NEBRASKA

By: _____
Mayor

Attest: _____
City Clerk

EXHIBIT A

Easement Area

David City Easement (Sanitary Sewer)

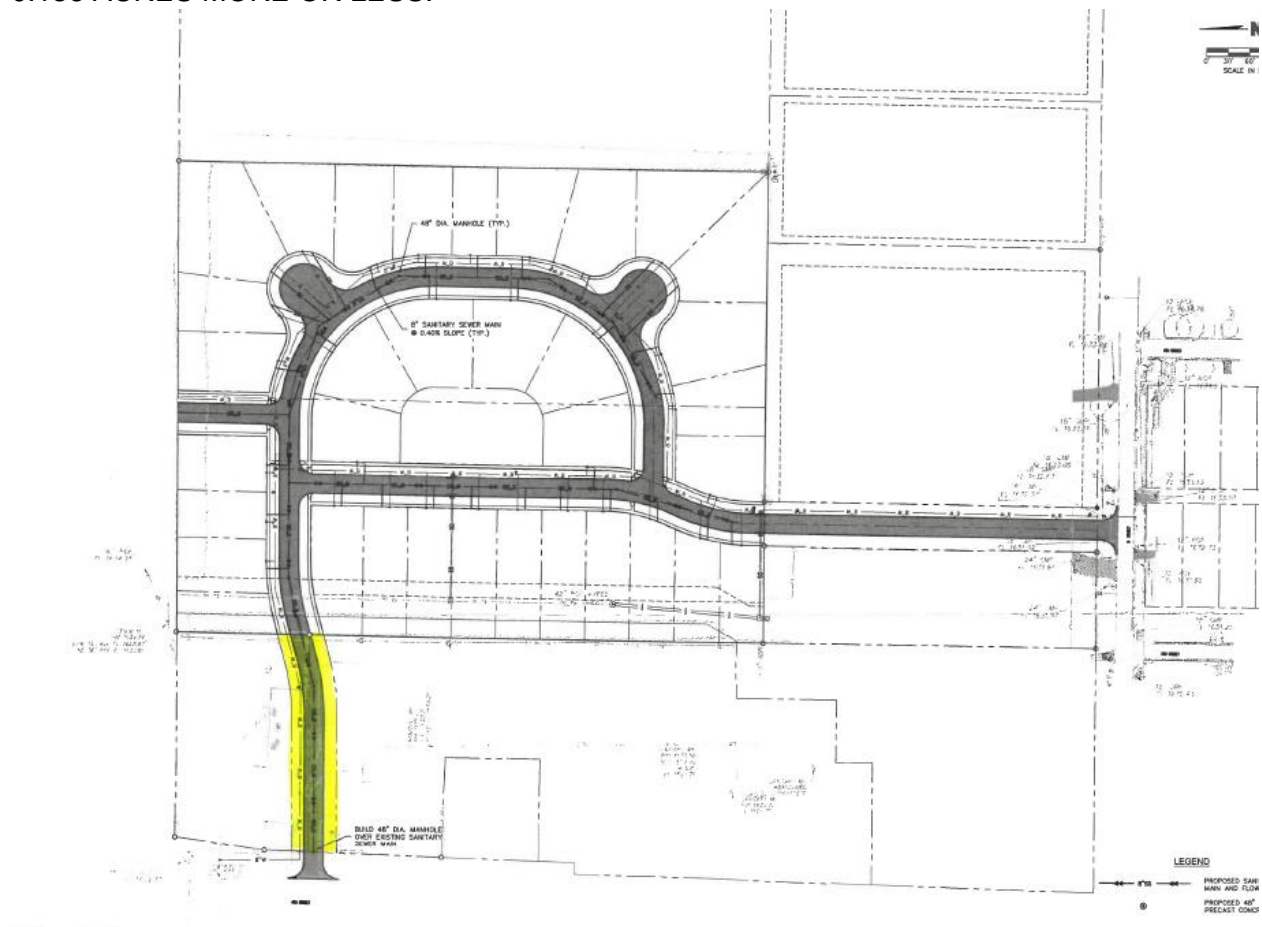
2021-08725

20' SANITARY SEWER EASEMENT DESCRIPTION

A 20 FT SANITARY SEWER EASEMENT LOCATED IN PART OF LOT 8, DAVID CITY LAND AND COMPANY'S SUBURBAN LOTS, CITY OF DAVID CITY, BUTLER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF VIVIAN LANE AND THE NORTHWEST CORNER OF LOT 10 BLOCK 3, NORTHLAND SUBDIVISION; THENCE ON AN ASSUMED BEARING OF N00°57'00"E, ALONG THE WEST LINE OF SAID NORTHLAND SUBDIVISION AND ALSO BEING THE EAST LINE OF LOT 8, DAVID CITY LAND AND COMPANY'S SUBURBAN LOTS, A DISTANCE OF 18.76 FEET TO THE POINT OF BEGINNING; THENCE S76°51'51"W A DISTANCE OF 70.97 FEET; THENCE N89°43'48"W A DISTANCE OF 224.89 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF 4TH STREET AND ALSO BEING THE WEST LINE OF SAID LOT 8; THENCE N02°03'45"E,

ALONG SAID EAST RIGHT OF WAY LINE AND SAID WEST LINE OF LOT 8, A DISTANCE OF 20.01 FEET; THENCE S89°43'48"E A DISTANCE OF 221.91 FEET; THENCE N76°51'51"E A DISTANCE OF 73.64 FEET TO A POINT ON SAID WEST LINE OF NORTHLAND SUBDIVISION AND ALSO BEING SAID EAST LINE OF LOT 8; THENCE S00°57'00"W, ALONG SAID WEST LINE OF NORTHLAND SUBDIVISION AND SAID EAST LINE OF LOT 8, A DISTANCE OF 20.62 FEET TO THE POINT OF BEGINNING. SAID 20 FT SANITARY SEWER EASEMENT CONTAINS A CALCULATED AREA OF 5914.37 SQUARE FEET OR 0.136 ACRES MORE OR LESS.



Council member Pat Meysenburg made a motion to approve purchasing a fully equipped 2019 Explorer for the police department from Butler County for \$10,000. Council Member Kevin Woita seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to approve purchasing equipment for the police department from Butler County for \$1,250, noting that with this purchase the negotiations are ended. Council Member Jim Angell seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Items Requested from Butler County:

- | | |
|----------------------|--|
| (1) State Radio | (1) Long Gun |
| (1) Body Worn Camera | (1) Body Armor Panels – Mike Mejsstrik |
| (1) Computer | (1) Handgun |
| (1) Taser | |

Council member Keith Marvin made a motion to approve the bidding documents for the "2023 AGP Substation - Long Lead Equipment" project and the authorization to advertise.

Council Member Kevin Woita seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

Council member Bruce Meysenburg made a motion to approve Pay Estimate #8 for M.E. Collins Contracting for Municipal Paving Improvements in the amount of \$26,345.00 and Change Order #7 in the amount of \$3,356.00. Council Member Pat Meysenburg seconded the motion. The motion carried.

Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat

Meysenburg: Yea, Kevin Woita: Yea

Yea: 6, Nay: 0

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CERTIFICATE OF PAYMENT: 8



Date of Issuance: March 14, 2023

Project: Municipal Paving Improvements, David City, Nebraska - 2022

Project No.: 021-07066

Contractor: M.E. Collins Contracting Co., Inc.

DETAILED ESTIMATE		
Description	Unit Price	Extension
See Attached.		
PLEASE REMIT PAYMENT TO: M.E. Collins Contracting Co., Inc.		

Value of Work Completed This Request: \$26,345.00

Original Contract Cost: \$1,848,434.00

Approved Change Orders:

No. 1 \$0.00

No. 2 \$47,250.00

No. 3 \$9,100.00

Total Contract Cost: \$1,935,246.00

Value of completed work and materials stored to date \$1,537,551.75

Less retainage percentage 6% \$92,421.70

Net amount due including this estimate \$1,445,130.05

Less: Estimates previously approved:

No. 1 <u>\$9,064.80</u>	No. 3 <u>\$116,932.09</u>	No. 5 <u>\$543,937.23</u>
No. 2 <u>\$189,875.93</u>	No. 4 <u>\$79,720.20</u>	No. 6 <u>\$443,793.80</u>

Total Previous Estimates: \$1,418,785.05

NET AMOUNT DUE THIS ESTIMATE: \$26,345.00

The undersigned hereby certifies, based upon periodic observations as set forth in scope of work and the data included in all applicable payment applications that, to the best of its knowledge, information and belief: (1) the work has progressed as indicated in the applicable payment applications; (2) the work performed and materials delivered by Contractor are in conformance with the plans and specifications; and (3) the Contractor, in accordance with the contract, is entitled to payment as indicated above.

This certification does not constitute a warranty or guarantee of any type. Client shall hold its Contractor solely responsible for the quality and completion of the Project, including construction in accordance with the construction documents. Any duty or obligation of Olsson hereunder is for the sole benefit of the Client and not for any third party, including the Contractor or any Subcontractor.

cc: City of David City - Owner
 M.E. Collins Contracting Co., Inc.
 Project File

OLSSON

By: 



Pay App.
8

Project: Municipal Paving Improvements, David City, Nebraska - 2022
 Contractor: M.E. Collins Contracting Co., Inc.

Project #: 021-07066
 Date: 3/14/2023

ITEM NO.	DESCRIPTION OF WORK	Pay Unit	Total Est. Qty	Unit Price	SCHEDULED VALUE (D * E)	WORK COMPLETED				MATERIALS PRESENTLY STORED (NOT IN C.R.)	TOTAL QUANTITY TO DATE (G+H)	TOTAL COMPLETED AND STORED TO DATE (H+J+K)	% (MF)	BALANCE TO FINISH (F-M)	RETAINAGE
						Qty from previous pay app.	Total From previous pay app.	Qty this Period	Total from this Period						
Base Bid															
1	Mobilization/Demobilization	L.S.	1	\$92,857.00	\$92,857.00	0.75	\$69,642.75	0.00	\$0.00	0.75	\$69,642.75	75%	\$23,214.25	\$4,186.20	
2	Build 8" Concrete Pavement w/integral Curb	S.Y.	12166	\$73.00	\$888,118.00	9,575.00	\$698,975.00	0.00	\$0.00	9,575.00	\$698,975.00	79%	\$189,143.00	\$42,015.14	
3	Build 6" Concrete Driveway	S.Y.	801	\$71.00	\$56,871.00	326.00	\$23,076.00	0.00	\$0.00	326.00	\$23,076.00	41%	\$33,796.00	\$1,387.03	
4	Build 4" Concrete Sidewalk	S.Y.	1370	\$57.00	\$78,090.00	626.00	\$36,625.00	0.00	\$0.00	626.00	\$36,625.00	46%	\$42,465.00	\$2,141.41	
5	Build Concrete Outfall	S.Y.	104	\$67.00	\$6,968.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$6,968.00	\$0.00	
6	Detectable Warning Panel	S.F.	190	\$51.00	\$9,180.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$9,180.00	\$0.00	
7	Build 3" Crushed Rock Driveway	TONS	34.4	\$61.00	\$2,098.40	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$2,098.40	\$0.00	
8	Build Area Inlet (1)	EA	7	\$3,333.00	\$27,531.00	7.00	\$27,531.00	0.00	\$0.00	7.00	\$27,531.00	100%	\$0.00	\$1,654.88	
9	Build Curb Inlet	EA	6	\$8,892.00	\$47,136.00	4.00	\$23,568.00	0.00	\$0.00	4.00	\$23,568.00	50%	\$23,568.00	\$1,416.66	
10	Build Storm Sewer Manhole	EA	11	\$6,639.00	\$73,029.00	11.00	\$73,029.00	0.00	\$0.00	11.00	\$73,029.00	100%	\$0.00	\$4,389.75	
11	Build Concrete Collar	EA	1	\$3,976.00	\$3,976.00	1.00	\$3,976.00	0.00	\$0.00	1.00	\$3,976.00	100%	\$0.00	\$239.00	
12	Build 18" fared end section	EA	2	\$1,234.00	\$2,468.00	1.00	\$1,234.00	0.00	\$0.00	1.00	\$1,234.00	50%	\$1,234.00	\$74.18	
13	Build 24" round equivalent fared end section	EA	13	\$1,423.00	\$18,499.00	14.00	\$19,922.00	0.00	\$0.00	14.00	\$19,922.00	108%	(\$1,423.00)	\$1,197.50	
14	Build storm sewer tap	EA	1	\$4,104.00	\$4,104.00	1.00	\$4,104.00	0.00	\$0.00	1.00	\$4,104.00	100%	\$0.00	\$246.69	
15	Install 18" storm sewer pipe	L.F.	459	\$64.00	\$29,376.00	459.00	\$29,376.00	0.00	\$0.00	459.00	\$29,376.00	100%	\$0.00	\$1,765.78	
16	Install 18" storm sewer pipe	L.F.	2293	\$67.00	\$153,631.00	2,293.00	\$153,631.00	0.00	\$0.00	2,293.00	\$153,631.00	100%	\$0.00	\$9,234.71	
17	Install 24" round equivalent storm sewer pipe	L.F.	190	\$133.00	\$25,270.00	206.00	\$27,398.00	0.00	\$0.00	206.00	\$27,398.00	108%	(\$2,128.00)	\$1,646.88	
18	Build fire hydrant assembly	EA	2	\$7,799.00	\$15,598.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$15,598.00	\$0.00	
19	Reconstruct 1" water services	EA	1	\$285.00	\$285.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$285.00	\$0.00	
20	12" water main lowering	EA	1	\$7,692.00	\$7,692.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$7,692.00	\$0.00	
21	4" water main lowering	EA	1	\$3,479.00	\$3,479.00	1.00	\$3,479.00	0.00	\$0.00	1.00	\$3,479.00	100%	\$0.00	\$209.12	
22	Adjust fire hydrant to grade	EA	2	\$1,122.00	\$2,244.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$2,244.00	\$0.00	
23	Adjust valve to grade	EA	7	\$432.00	\$3,024.00	5.00	\$2,160.00	0.00	\$0.00	5.00	\$2,160.00	71%	\$864.00	\$129.84	
24	Adjust curb stop to grade	EA	5	\$484.00	\$2,420.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$2,420.00	\$0.00	
25	Adjust manhole to grade - type 1	EA	5	\$315.00	\$1,575.00	4.00	\$1,260.00	0.00	\$0.00	4.00	\$1,260.00	80%	\$315.00	\$75.74	
26	Adjust manhole to grade - type 2	EA	2	\$420.00	\$840.00	1.00	\$420.00	0.00	\$0.00	1.00	\$420.00	50%	\$420.00	\$26.25	
27	Remove pavement	S.Y.	7663	\$11.00	\$84,293.00	7,500.00	\$86,500.00	0.00	\$0.00	7,500.00	\$86,500.00	98%	\$1,793.00	\$4,959.05	
28	Remove driveway	S.Y.	654	\$21.00	\$13,844.00	654.00	\$13,844.00	0.00	\$0.00	654.00	\$13,844.00	100%	\$0.00	\$838.17	
29	Remove sidewalk	S.Y.	70	\$21.00	\$1,470.00	20.00	\$420.00	0.00	\$0.00	20.00	\$420.00	29%	\$1,050.00	\$26.25	
30	Remove storm sewer pipe	L.F.	1155	\$12.00	\$13,860.00	1,155.00	\$13,860.00	0.00	\$0.00	1,155.00	\$13,860.00	100%	\$0.00	\$833.12	
31	Remove fared end section	EA	2	\$308.00	\$616.00	2.00	\$616.00	0.00	\$0.00	2.00	\$616.00	100%	\$0.00	\$37.03	
32	Remove and salvage fire hydrant	EA	2	\$1,283.00	\$2,566.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$2,566.00	\$0.00	
33	Remove fence	L.F.	442	\$8.00	\$3,536.00	442.00	\$3,536.00	0.00	\$0.00	442.00	\$3,536.00	100%	\$0.00	\$212.55	
34	Remove tree	EA	3	\$2,731.00	\$8,193.00	5.00	\$13,655.00	0.00	\$0.00	5.00	\$13,655.00	167%	(\$5,462.00)	\$820.80	
35	Remove and reset mailbox	EA	15	\$525.00	\$7,875.00	13.00	\$6,825.00	0.00	\$0.00	13.00	\$6,825.00	87%	\$1,050.00	\$410.25	
36	Seeding	S.Y.	10140	\$1.70	\$17,238.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$17,238.00	\$0.00	
37	Inlet sediment filter	EA	9	\$281.00	\$2,529.00	9.00	\$2,529.00	0.00	\$0.00	9.00	\$2,529.00	100%	\$0.00	\$152.02	
38	Erosion control mat, class 1D	S.Y.	2468	\$2.20	\$5,429.60	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$5,429.60	\$0.00	
39	Build fabric silt fence	L.F.	731	\$6.00	\$4,386.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$4,386.00	\$0.00	
40	General clearing and grubbing	L.S.	1	\$7,159.00	\$7,159.00	1.00	\$7,159.00	0.00	\$0.00	1.00	\$7,159.00	100%	\$0.00	\$430.32	
41	Earthwork	L.S.	1	\$36,347.00	\$36,347.00	1.00	\$36,347.00	0.00	\$0.00	1.00	\$36,347.00	100%	\$0.00	\$2,184.81	
42	Over-excavation	C.Y.	5900	\$6.00	\$29,500.00	5,900.00	\$29,500.00	0.00	\$0.00	5,900.00	\$29,500.00	100%	\$0.00	\$1,773.23	
43	Import	C.Y.	4100	\$12.00	\$49,200.00	4,100.00	\$49,200.00	0.00	\$0.00	4,100.00	\$49,200.00	100%	\$0.00	\$2,957.39	
					\$1,844,501.00		\$1,458,496.75		\$0.00		\$1,458,496.75		\$386,004.25	\$87,669.73	
Change Order															
CO2-1	Water Main Taps	EA	3	\$15,750.00	\$47,250.00	3.00	\$47,250.00	0.00	\$0.00	3.00	\$47,250.00	100%	\$0.00	\$2,840.18	
CO3-1	Water Restraints	EA	4	\$975.00	\$3,500.00	2.40	\$2,100.00	0.00	\$0.00	2.40	\$2,100.00	60%	\$1,400.00	\$126.23	
CO3-2	Re-Install Fencing	L.S.	1	\$5,600.00	\$5,600.00	0.60	\$3,360.00	0.00	\$0.00	0.60	\$3,360.00	60%	\$2,240.00	\$201.97	
CO4-1	Inlet Box	EA	1	\$2,750.00	\$2,750.00	0.00	\$0.00	1.00	\$2,750.00	1.00	\$2,750.00	100%	\$0.00	\$165.30	
CO5-1	Manhole #7, Grades were Incorrect	L.S.	1	\$1,535.00	\$1,535.00	0.00	\$0.00	1.00	\$1,535.00	1.00	\$1,535.00	100%	\$0.00	\$92.27	
CO5-2	Removed 1 Tree	L.S.	1	\$650.00	\$650.00	0.00	\$0.00	1.00	\$650.00	1.00	\$650.00	100%	\$0.00	\$39.07	

CO5-3	Dig Back 40' to Raise 2 Communication Lines @ 11th St Removed 2X4' Concrete Over 12" Water Line.	L.S.	1	\$2,455.00	\$2,455.00	0.00	\$0.00	1.00	\$2,455.00	1.00	\$2,455.00	100%	\$0.00	\$147.57	
CO5-4	Cutout/Lift Off Pipe Removed 4X5' Concrete Over Sewer Line @ 7th & 8th In Alley	L.S.	1	\$1,250.00	\$1,250.00	0.00	\$0.00	1.00	\$1,250.00	1.00	\$1,250.00	100%	\$0.00	\$75.14	
CO5-5	Lowered Electric Line	L.S.	1	\$550.00	\$550.00	0.00	\$0.00	1.00	\$550.00	1.00	\$550.00	100%	\$0.00	\$33.06	
CO5-6	Helped David City Lower 2" Water Line & Install 8"	L.S.	1	\$775.00	\$775.00	0.00	\$0.00	1.00	\$775.00	1.00	\$775.00	100%	\$0.00	\$46.58	
CO5-7	Water Line 1 Week to Run 120 LF of Pipe, Relocate Fiber & Communication Lines	L.S.	1	\$5,680.00	\$5,680.00	0.00	\$0.00	1.00	\$5,680.00	1.00	\$5,680.00	100%	\$0.00	\$341.42	
CO5-8	Install 1" Expansion/Sealing Joint	L.S.	1	\$10,700.00	\$10,700.00	0.00	\$0.00	1.00	\$10,700.00	1.00	\$10,700.00	100%	\$0.00	\$643.17	
CO6-1		L.S.	1	\$8,050.00	\$8,050.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0%	\$8,050.00	\$0.00	
Contract Total					\$1,935,246.00		\$1,511,206.75		\$26,345.00	\$0.00		\$1,537,551.75	79%	\$397,694.25	\$92,421.70

Original Contract	\$1,848,434.00
+ CO 1	\$0.00
+ CO 2	\$47,250.00
+ CO 3	\$9,100.00
+ CO 4	\$0.00
+ CO 5	\$22,412.00
+ CO 6	\$8,050.00
Total Contract to Date	<u>\$1,935,246.00</u>
Total Work Completed to Date	\$1,537,551.75
Total Materials Stored to Date	<u>\$0.00</u>
Total Value completed & Stored to Date	\$1,537,551.75
- Retainage 6%	\$92,421.70
Net Total Due Less Retainage	\$1,445,130.05
- Pay AP 1	\$9,064.80
- Pay AP 2	\$189,875.93
- Pay AP 3	\$116,932.09
- Pay AP 4	\$79,720.20
- Pay AP 5	\$643,937.23
- Pay AP 6	\$443,793.80
- Pay AP 7	\$35,461.00
Total Previous	<u>\$1,418,785.05</u>
Net Amount Due This Estimate	\$26,345.00

Footnotes:
 (1) Item 8 - Quantity updated from 8 EA to 7 EA per Change Order #5

Council member Pat Meysenburg made a motion to authorize the Mayor to execute the Pipeline Crossing Agreement with the Nebraska Central Railroad. Council Member Tom Kobus seconded the motion. The motion carried.
 Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
 Yea: 6, Nay: 0

PLX-DavidCity-MP23.68

**PIPELINE CROSSING
AGREEMENT**

Mile Post: 23.68
Location: David City, NE

THIS AGREEMENT (“Agreement”) is made and entered into as of the 14th day of March 2023 (“Effective Date”) by and between **NEBRASKA CENTRAL RAILROAD**, a Delaware corporation, (“Licensor”) and the **CITY OF DAVID CITY**, to be addressed at 490 E Street, David City, NE 68632 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT

A. In consideration of the license fee to be paid by Licensee set forth below and in further consideration of the covenants and agreements to be performed by Licensee, Licensor hereby grants to Licensee the right to construct and thereafter, during the term hereof, maintain and operate **one 7.983” wastewater transmission pipeline** encased in a **15.375” steel casing** crossing only, including any appurtenances required for the operation of said pipeline (collectively, “Licensee’s Facilities”) across Licensor’s real property, trackage, or other facilities located in (“Railroad Property”). The specific specifications and limited purpose for Licensee’s Facilities on, along, across and under Railroad Property are described in and shown on the Print and Specifications dated attached hereto as **Exhibit A** and made a part hereof.

B. Licensee represents and warrants that Licensee’s Facilities will (i) only be used for one (1) **7.983” wastewater transmission pipeline** encased in a **15.375” steel casing** pipeline crossing, and (ii) not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

C. Licensee acknowledges that if it or its contractor provides Licensor with digital imagery depicting Licensee’s Facilities (“Digital Imagery”), Licensee authorizes Licensor to use the Digital Imagery in preparing **Exhibit A**. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Licensor to use the Digital Imagery in said manner.

Article 2. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**.

Article 3. TERM

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as provided in the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B**.

Article 4. LICENSEE'S COMPLIANCE WITH GENERAL TERMS

Licensee represents and warrants that all work on Licensee's Facilities performed by Licensee or its contractors will strictly comply with all terms and conditions set forth herein, including the General Terms and Conditions, attached hereto as Exhibit B and made part hereof.

Article 5. INSURANCE

A. During the term of this Agreement, Licensee shall fully comply or cause its contractor(s) to fully comply with the insurance requirements described in **Exhibit C**, attached hereto and made a part hereof. Licensee shall send copies of all insurance documentation (e.g. certificates, endorsements, etc.) to Licensor at the address listed in the "NOTICES" Section of this Agreement.

B. If Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this Agreement, those statutes shall apply.

Article 6. DEFINITION OF LICENSEE

For purposes of this Agreement, all references in this Agreement to Licensee will include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority (collectively, a "Contractor"). If a Contractor is hired by Licensee to perform any work on Licensee's Facilities (including initial construction and subsequent relocation, maintenance, and/or repair work), then Licensee shall provide a copy of this Agreement to its Contractor(s) and require its Contractor(s) to comply with all terms and conditions of this Agreement, including the indemnification requirements set forth in the "IDEMNITY" Section of **Exhibit B**. Licensee shall require and Contractor to release, defend, and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend, and indemnify Licensor herein.

Article 7. ATTORNEY'S FEES, EXPENSES, AND COSTS

If litigation or other court action or similar adjudicatory proceeding is undertaken by Licensee or Licensor to enforce its rights under this Agreement, all fees, costs, and expenses, including without limitation, reasonable attorneys' fees and court costs, of the prevailing Party in such action, suit, or proceeding shall be reimbursed or paid by the Party against whose interest the judgement or decision is rendered. The provisions of this Article shall survive the termination of this Agreement.

Article 8. WAIVER OF BREACH

The waiver by Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any remedy for any subsequent breach thereof.

Article 9. ASSIGNMENT

A. Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor, which must be requested in writing by Licensee. Any assignment or attempted transfer of this Assignment or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without Licensor's written consent, will be absolutely void and may result in Licensor's termination of this Agreement pursuant to the "TERMINATION: REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B**.

B. Upon Licensor's written consent to any assignment, this Agreement will be binding upon and inure to the benefit of the parties thereto, successors, heirs, and assigns, executors, and administrators.

Article 10. SEVERABILITY

Any provisions of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Article 11. NOTICES

Except Licensee's commencement of work notice(s) required under **Exhibit B**, all other notices required by this Agreement must be in writing, and (i) personally served upon the business address listed below ("Notices Address"), (ii) sent overnight via express delivery by a nationally recognized overnight delivery service such as Federal Express Corporation or United Parcel Service to the Notice Address, or

(iii) by certified mail, return receipt requested to the Notice Address. Overnight express delivery notices will be deemed to be given upon receipt. Certified mail notices will be deemed to be given three (3) days after deposit with the United States Postal Service.

Article 12. SPECIAL PROVISION – CONSTRUCTION OBSERVATIONS

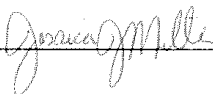
Licenser requires Licensee to provide monitoring of tracks and construction observation through Licenser approved observer named below during all construction and installation work. License is to directly coordinate services with the named inspector.

IN WINESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

NEBRASKA CENTRAL RAILROAD

CITY OF DAVID CITY

By: _____

By:  _____


Printed Name: _____

Printed Name: Jessica Miller

Title: _____

Title: Mayor

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

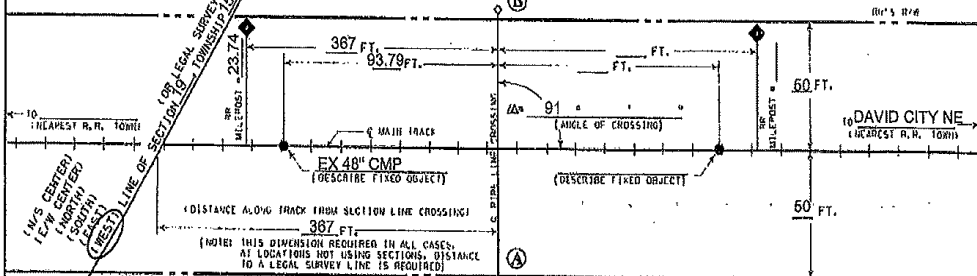


NO SCALE

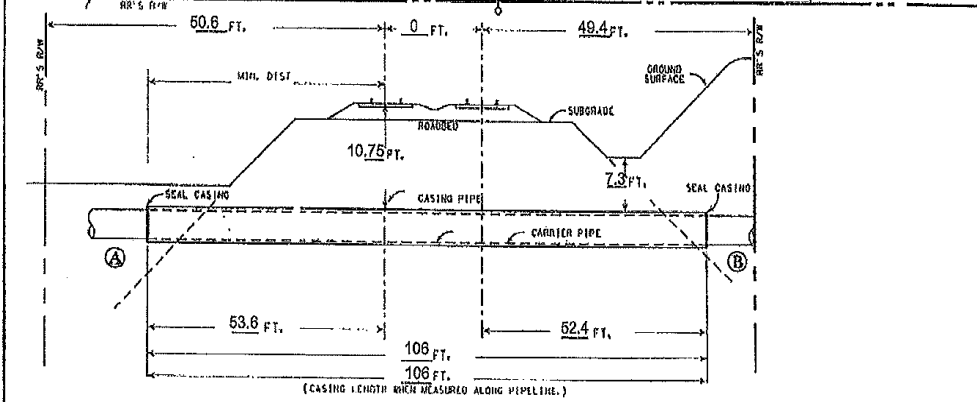
ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.

FORM DR-0404-B
 REV. 10-9-2012
 www.uprr.com



DAVID CITY NE
 (LARGEST R.R. TOWN)



(CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

NOTE: REFER TO ANEMMA VOLUME 1 PART 8 FOR REQUIREMENT RELATING TO PIPELINE CROSSINGS.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO

B) IF YES, NAME OF STREET _____

D) DISTRIBUTION LINE _____ OR TRANSMISSION LINE _____

C) CARRIER PIPE:
 COMMODITY TO BE CONVEYED DOMESTIC WASTEWATER
 OPERATING PRESSURE 0 PSI OD OF 8.989"
 WALL THICKNESS 0.603" DIAMETER _____ MATERIAL PVC

E) CASING PIPE:
 WALL THICKNESS 0.3125" DIAMETER ID OF 15.375" MATERIAL STEEL
 NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
 TUNNEL; OTHER _____

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK >50

I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATIONS DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE _____ DOES; _____ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20230217028

EXHIBIT "A"
(FOR RAILROAD USE ONLY)

Nebraska Central Railroad

M. P. 23.68 E. S. _____

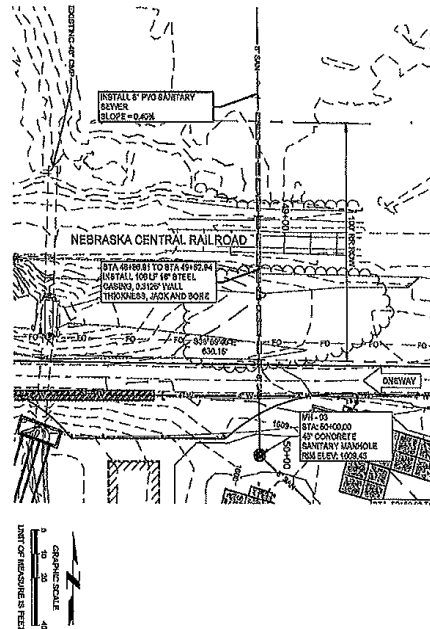
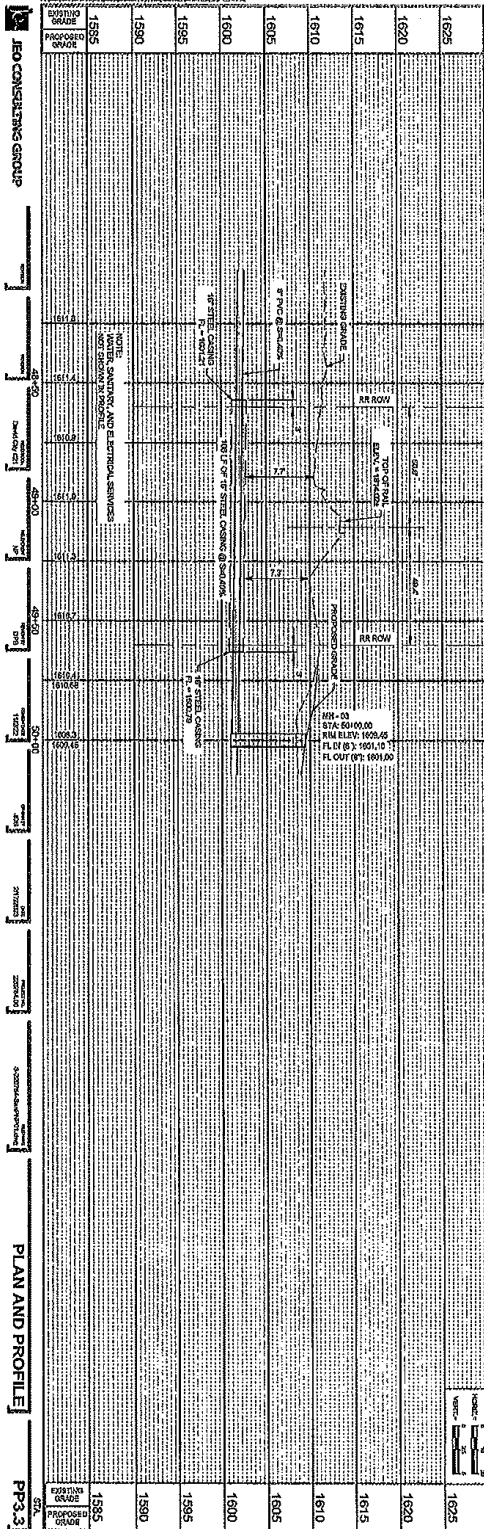
ENCASED Wastewater CROSSING AT
David City Butler NE

CITY OF David City

RR FILE NO. _____ DATE 3/2023

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
 PHONE 1-800-336-9193



2022
 CAMPGROUND IMPROVEMENTS
 DAVID CITY, NE

EXHIBIT B
GENERAL TERMS AND CONDITIONS

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant is subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property including the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Licensor without liability to Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of license and lessees of Railroad Property) and the right of Licensor to renew and extend the same and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. ENGINEERING REQUIREMENTS; PERMITS.

A. Licensee's Facilities will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, removed, or abandoned in place on Railroad Property by Licensee or its contractor to Licensor's satisfaction and in strict conformity with: (i) Licensor's current engineering standards and specifications, including those for shoring and cribbing to protect Licensor's railroad operations and facilities ("Railroad Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering – Design or its authorized representative ("Railroad Engineering Representative"); (ii) such other additional safety standards as Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules, and regulations, including any applicable Federal Railroad Administration and Federal Energy Regulatory Commission regulations and enactments (collectively, "Laws"). If there is and conflict between Railroad Specifications, Railroad Additional Requirements, and Laws, the most restrictive will apply.

B. Licensee shall keep the soil over Licensee's Facilities thoroughly compacted and maintain the grade over and around Licensee's Facilities even with the surface of the adjacent ground.

C. If needed, Licensee shall secure, at Licensee's sole cost and expense, any and all necessary permits require to perform any work on Licensee's Facilities.

Section 3. NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES

A. Licensee and its contractors are strictly prohibited from commencing any work associated with Licensee's Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this Exhibit B. Upon Licensor's approval, Licensee shall contact both of Licensor's field representatives ("Licensor's Field Representatives") at least ten (10) days before commencement of any work on Licensee's Facilities.

B. Licensee shall not commence any work until: (1) Licensor has determined whether flagging or other special protective or safety measures ("Safety Measures") are required for performance of the work pursuant to the "FLAGGING" Section of this Exhibit B and provided Licensee written authorization to commence work; and (2) Licensee has complied with the "PROTECTION OF FIBER OPTIC CABLE SYSTEMS" Section of this Exhibit B.

C. If, at any time, an emergency arises involving Licensee's Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at.

Section 4. FLAGGING

A. Following Licensee's notice to Licensor's Field Representatives required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this Exhibit B, Licensor shall inform Licensee if Safety Measures are required for performance of the work by Licensee or its contractor on Railroad Property. If Safety Measures are required, no work of any kind may be performed by Licensee or its contractor(s) until arrangements for the safety Measures have been made and scheduled. If no Safety Measures are required, Licensor will give written authorization to commence work.

B. If any Safety Measures are performed or provided by Licensor, including but not limited to flagging, Licensor shall bill Licensee for such expenses incurred by Licensor, unless Licensor and a

federal, state, or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state, or local governmental entity. Additional information regarding the submission of such expenses by Licensor and payment thereof by Licensee can be found in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this Exhibit B. If Licensor performs any Safety Measures, Licensee agrees that Licensee is not relieved of any responsibilities or liabilities set forth in this Agreement.

C. For flagging, the rate of pay per hour for each flagger will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage, and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

D. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagger is furnished, unless the flagger can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagger is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flaggers following the flaggers' assignment to work on the project for which Licensor is required to pay the flaggers and which could not reasonably be avoided by Licensor by assignment of such flaggers to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagger. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the days the flagger was scheduled, even though flagging is no longer required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

Section 5. SAFETY

A. Safety of personnel, property rail operations and the public is of paramount importance in the prosecution of any work on Railroad Property performed by Licensee or its contractor, and takes precedence over any work on Licensee's Facilities to be performed Licensee or its contractors. Licensee shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Licensee's Facilities. Licensee and its contractor shall, at a minimum comply, with Licensor's then current safety standards located at the below web address ("Licensor's Safety Standards") to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensor's Safety Standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of Licensor's Safety Standards to each of its employees before they enter Railroad Property.

B. Licensee shall keep the job site on Railroad Property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

C. Licensee represents and warrants that all parts of Licensee's Facilities within and outside of the limits of Railroad Property will not interfere whatsoever with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of Licensor's, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

D. Licensor's operations and work performed by Licensor's personnel may cause delays in Licensee's or its contractor's work on Licensee's Facilities. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee must coordinate any work on Railroad Property by Licensee or any third party with Licensor's Field Representatives in strict compliance with the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this Exhibit.

E. Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this Exhibit B.

F. Licensee may use unmanned aircraft systems ("UAS") to inspect Licensee's Facilities only upon the prior authorization from and under the direction of Licensor's Field Representatives. Licensee represents and warrants that its use of UAS on Railroad Property will comply with Licensor's then-current Unmanned Aerial Systems Policy and all applicable laws, rules and regulations, including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

Section 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

Fiber optic cable systems may be buried on Railroad Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. In addition to the notifications required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensee shall telephone Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 800-990-2676 to determine if fiber optic cable is buried anywhere on Railroad Property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Railroad Property until all such protection or relocation has been completed.

Section 7. LICENSEE'S PAYMENT OF EXPENSES

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Railroad Property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. Licensee shall promptly pay or discharge all taxes, charges, and assessments levied upon or in respect to such property shall not be increased because of the location, construction, or maintenance of Licensee's Facilities or any improvement, appliance, or fixture connected therewith placed upon such property, or an account of to Licensee's interest therein. Where such tax, charge, or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of the property of Licensor, then Licensee shall pay to

Licensors an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

C. As set forth in the "FLAGGING" Section of this **Exhibit B**, Licensor shall have the right, if it so elects, to provide any Safety Measures Licensor deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, including, but not limited to supervision, inspection, and flagging services. In the event Licensor provides such Safety Measures, Licensor shall submit an itemized invoice to Licensee's notice recipient listed in the "NOTICES" Article of this Agreement. Licensee shall pay to Licensor the total amount listed on such invoice within thirty (30) days of Licensee's receipt of such invoice.

Section 8. MODIFICATIONS TO LICENSEE'S FACILITIES.

A. This grant is subject to Licensor's safe and efficient operation of its railroad and continued use and improvement of Railroad Property (collectively, "Railroad Use"). Accordingly, Licensee shall, at its sole cost and expense, modify, reconstruct, repair, renew, revise, relocate, or remove (individually, "Modification", or collectively, "Modifications") all or any portion of Licensee's Facilities as Licensor may designate or identify, in its sole discretion, in the furtherance of Railroad's Use.

B. Upon any Modifications of all or any portion of Licensee's Facilities to another location on Railroad Property, Licensor and Licensee shall execute a Supplemental Agreement to this Pipeline Agreement to document the Modification(s) to Licensee's Facilities on Railroad Property. If the Modifications result in Licensee's Facilities moving off of Railroad Property, this Agreement will terminate upon Licensee's completion of such Modification(s) and all requirements contained within the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of this **Exhibit B**. Any such Modification(s) off of Railroad Property will not release Licensee from any liability or other obligation of Licensee arising prior to and upon completion of any such Modifications to the Licensee's Facilities.

Section 9. RESTORATION OF RAILROAD PROPERTY

In the event Licensee, in any manner moves or disturbs any property of Licensor in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, then, Licensee shall, as soon as possible and at Licensee's

sole cost and expense, restore Licensor's property to the same condition as the same were before such property was moved or disturbed.

Section 10. INDEMNITY.

A. Definitions. As used in this Section:

1. "Licensor" includes Licensor, its affiliates, its and their officers, directors, agents and employees, and other railroad companies using Railroad Property at or near the location of Licensee's installation and their officers, directors, agents, and employees.
2. "Licensee" includes Licensee and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.
3. "Loss" includes claims, suits, taxes, loss, damages, (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgements, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigations costs, and appeal expenses.

B. Licensee shall release, defend, indemnify, and hold harmless Licensor from and against any and all Loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to Licensee's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of Licensee's Facilities, including, but not limited to, any actual or alleged:

1. Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s), including, but not limited to, Licensee, Licensor, any telecommunications company, or the agents, contractors, subcontractors, sub-subcontractors, or employees of the foregoing;
2. Damage to or the disturbance; loss, movement, or destruction of Railroad Property, including loss of use and diminution in value, including, but not limited to, any telecommunications system(s) or fiber optic cable(s) on or near Railroad Property, any property of Licensee or Licensor, or any property in the car, custody, or control of Licensee or Licensor;

3. Removal of person(s) from Railroad Property;
4. Any delays or interference with track or Railroad's Use caused by Licensee's activity(ies) on Railroad Property, including without limitation the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith;
5. Right(s) or interest(s) granted pursuant to this Agreement;
6. Contents escaping from Licensee's Facilities, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;
7. Licensee's breach of this Agreement or failure to comply with its provisions, including, but not limited to, any violation or breach by Licensee of any representations and warranties Licensee has made in this Agreement; and
8. Violation by Licensee of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal Railroad Administration regulations.

C. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF LICENSOR TO LOSSES CAUSED BY, ARISING FROM, RELATING TO, OR RESULTING FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LICENSOR, AND SUCH NEGLIGENCE OF LICENSOR SHALL NOT LIMIT, DIMINISH, OR PRECLUDE LICENSEE'S OBLIGATIONS TO LICENSOR IN ANY RESPECT. NOTWITHSTANDING THE FOREGOING, SUCH OBLIGATION TO INDEMNIFY LICENSOR SHALL NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE SOLE, ACTIVE AND DIRECT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF LICENSOR AS DETERMINED IN A FINAL JUDGEMENT BY A COURT OF COMPETENT JURISDICTION.

Section 11. TERMINATION; REMOVAL OF LICENSEE'S FACILITIES.

A. If Licensee does not use the right herein granted on Licensee's Facilities for one (1) year, or if Licensee continues in default in the performance of any provision of this Assignment for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its sole

discretion, terminate this Agreement by written notice to Licensee at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

B. In addition to the provisions of Paragraph "A" above, this Agreement may be terminated by written notice given by either party, without cause, upon thirty (30) days written notice to the non-terminating party at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

C. Prior to the effective date of any termination described in this Section, Licensee shall submit an application to Licensor's online Utility Contracts System at this link for Licensee's removal, or if applicable, abandonment in place of Licensee's Facilities located on Railroad Property ("Removal/Abandonment Work"). Upon the Railroad Engineering Representatives approval of Licensee's application for the Removal/Abandonment Work, Licensor and Licensee shall execute a separate consent document that will govern Licensee's performance of the Removal/Abandonment Work from those portions of Railroad Property not occupied by roadbed and/or trackage ("Consent Document"). Licensee shall then restore the impacted Railroad Property to the same or reasonably similar condition as it was prior to Licensee's installation of Licensee's Facilities. For purposes of this Section, Licensee's (i) performance of the Removal/Abandonment Work, and (ii) restoration work will hereinafter be collectively referred to as the "Restoration Work".

D. Following Licensee's completion of the Restoration Work, Licensee shall provide a written certification letter to Licensor at the address listed in "NOTICES" Article of this Agreement which certifies that the Restoration Work has been completed in accordance with the Consent Document. Licensee shall report to governmental authorities, as required by law, and notify Licensor immediately if any environmental contamination is discovered during Licensee's performance of the Restoration Work. Upon discovery, the Licensee shall initiate any and all removal, remedial and restoration actions that are necessary to restore the property to its original, uncontaminated condition. Licensee shall provide written certification to Licensor at the address listed in the "NOTICES" Article of this Agreement that environmental contamination has been remediated and the property has been restored in accordance with Licensor's requirements. Upon Licensor's receipt of Licensee's restoration completion certifications, this Agreement will terminate.

E. In the event that Licensee fails to complete any of the Restoration Work, Licensor may, but is not obligated, to perform the Restoration Work. Any such work actually performed by Licensor will be at the cost and expense of Licensee. In the event that Licensor performs any of the Restoration Work, Licensee shall release Licensor from any and all Loss (defined in the "INDEMNITY" Section of this **Exhibit B**) arising out of or related to Licensor's performance of the Restoration Work.

F. Termination of this Agreement for any reason will not affect of right or obligations of the parties which may have accrued, or liabilities or Loss (defined in the "INDEMNITY" Section of this **Exhibit B**), accrued or otherwise, which may have arisen prior to such termination.

EXHIBIT C
INSURANCE REQUIREMENTS

In accordance with Article 5 of this Agreement, Licensee shall (1) procure and maintain at its sole cost and expense, or (2) require its Contractor(s) to procure and maintain, at their sole cost and expense, the following insurance coverage:

A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or substitute from providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATION OF INSURANCE:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute from providing equivalent coverage) showing "Nebraska Central Railroad Property" as the Designated Job Site.

B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less than \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Nebraska Central Railroad Property" as the Designated Job Site.

C. **Workers' Compensation and Employers' Liability Insurance.** Coverage must include but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out

of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Environmental Liability Insurance.** Environmental Legal Liability Insurance (ELL) applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$4,000,000.

Licensee warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. **Railroad Protective Liability Insurance.** Licensee must maintain for the duration of work "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement. Notwithstanding the foregoing, Licensee does not need Railroad Protective Liability Insurance after its initial construction work is complete and all excess materials have been removed from Licensor's property; PROVIDED, however, that Licensee shall procure such coverage for any subsequent maintenance, repair, renewal, modification, reconstruction, or removal work on Licensee's Facilities.

F. **Umbrella or Excess Insurance.** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

G. All policy(ies) required above (except business automobile, workers' compensation and employers' liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage.) The coverage provided to Licensor as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSOR AND LICENSEE EXPECT THAT LICENSOR WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

I. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Licensor and its agents, officers, directors and employees for damages covered by the workers' compensation and employers' liability or commercial umbrella or excess liability obtained by Licensee required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better and authorized to do business in the state(s) in which the work is to be performed.

K. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

Council member Keith Marvin made a motion to approve setting a special meeting date for April 5, 2023. Council Member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0

Council member Pat Meysenburg made a motion to adjourn. Council Member Bruce Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Yea, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea
Yea: 6, Nay: 0



CERTIFICATION OF MINUTES
March 22, 2023

I, Tami Comte, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of March 22, 2023; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, City Clerk